

HOGAN & HARTSON  
L.L.P.

Writer's Direct Dial:  
202-637-6522

June 3, 2004

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910

*BY ECFS*

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**RE:** Notice of *Ex Parte* Presentation – American Samoa Telecommunications Authority  
Rural Health Care Support Mechanism (WC Docket No. 02-60)

Dear Ms. Dortch:

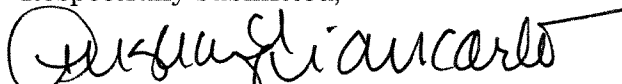
On behalf of the American Samoa Telecommunications Authority (“ASTCA”), my colleague David Sieradzki and I met today with certain members of the Commission’s staff regarding the above-captioned proceeding. We met with:

- Rich Lerner, Associate Chief, Wireline Competition Bureau;
- Gina Spade, Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau;
- Regina Brown, Telecommunications Access Policy Division, Wireline Competition Bureau; and
- Shannon Lipp, Telecommunications Access Policy Division, Wireline Competition Bureau.

During the meeting, we discussed the issues raised in the attached presentation, which reflects positions set forth in ASTCA’s Jan. 23, 2004 petition for reconsideration of the Commission’s Nov. 17, 2003 *Report & Order* in this proceeding. The presentation also reflects positions raised by ASTCA in its Mar. 18, 2004 reply to opposition to petition for reconsideration.

Kindly contact me if you have any further questions.

Respectfully submitted,



Angela E. Giancarlo  
Counsel for the American Samoa  
Telecommunications Authority

Attachment

cc: Rich Lerner  
Gina Spade  
Regina Brown  
Shannon Lipp

**American Samoa Telecommunications Authority (ASTCA)**

**June 3, 2004**

**WC Docket No. 02-60**

**The Problem:**

- The discrepancy between USAC's designation of American Samoa as entirely rural and the Commission's designation of American Samoa's main island of Tutuila as "urban" solely for the purpose of setting the urban rate under the existing rural health care program improperly prohibits the distribution of urgently needed telemedicine support in American Samoa.

**The Solution:**

- The Commission must exercise its statutory authority to modify its rules in a manner to permit universal service support for advanced telecommunications connections between rural health care providers located in insular areas such as American Samoa and advanced health care facilities located in a different state or territory.

**Pertinent Facts:**

- In addition to the legal authority discussed below, a unique combination of circumstances justifies this minor rule change:
  - The Territory of American Samoa is a geographically remote insular area (located approximately 2600 miles from Hawaii) with a very unevenly distributed populace. Its largest island, Tutuila, cannot seriously be considered "urban" in any meaningful sense of the word.
  - American Samoa has no fully equipped hospital within its borders and ASTCA receives no universal service subsidies whatsoever for its provision of advanced telecommunications services (384 kbps connection links) between health care providers at the LBJ Tropical Medical Center in Tutuila and their counterparts at the University of Hawaii in Honolulu.
  - The Commission long ago recognized that its rural telemedicine rules do not benefit American Samoa or the three other remote insular territories and has indicated its willingness to "tailor additional support mechanisms to address the unique circumstances faced by both the health care providers and telecommunications carriers that serve these islands."
  - The Commission has also noted that the rural health care support mechanism is "greatly underutilized." Further, there is no indication that the modest modifications implemented by the *Report & Order* will provide a major stimulus to increase distributions from the fund.

**Legal Authority:**

- Section 254(h)(2)(A) empowers the Commission to enhance access to advanced telecommunications and information services for all public and non-profit health care providers, without regard to the urban-rural rate comparison set forth in Section 254(h)(1)(A). Section 254(h)(2)(A) *alone* authorizes the Commission to provide universal service support for the advanced telecommunications services between American Samoa and an urban center located outside the territory.

- The *Texas OPUC* case established that, despite the absence of specific statutory authorization, Section 254(h)(2)(A) grants the authority to provide funding for advanced telecommunications services over and above that specifically directed in the statute. Stating, “we are convinced that Congress intended to allow the FCC broad authority implement this section of the Act,” the court held that the Commission’s “modest steps to ensure that Congress’s instructions on expanding universal service” were permissible under Section 254(h)(2)(A). The direct analogy to the matter at hand is clear – ASTCA urges the Commission to once again use this Section 254(h)(2)(A) authority to grant its modest request.
- Congress wanted rural health care providers located in insular areas to receive universal service support. Section 254(h)(1)(A) directs the Commission to ensure that health care providers serving rural communities *not pay more* than their urban counterparts for their telecommunications needs. In addition, Section 254(h)(2)(A) requires the Commission to enhance access to advanced telecommunications and information services to *all* Americans, no matter where they are located.

### **Counterarguments:**

- Only Verizon opposed ASTCA’s Jan. 23, 2004 petition for reconsideration. Yet, Verizon’s pleading does not fully address, let alone refute, the legal analysis set forth in ASTCA’s petition.
- Although Verizon recognizes that Section 254(h)(2)(A) authorizes the Commission to take action to increase access to advanced telecommunications and information services, Verizon insists that the Commission is limited by Section 254(h)(1)(A), which discusses support for “telecommunications services” even though ASTCA is providing “advanced telecommunications services” by virtue of its advanced broadband 384 kbps links.
- Verizon admits that the *Texas OPUC* ruling “established that Section 254(h)(2) could be used to effectuate a minor modification to the Schools and Libraries program.” Yet, Verizon does not acknowledge that ASTCA’s proposal – seeking a minor modification to the significantly smaller rural health care program – is far narrower than the broad program change permitted by the *Texas OPUC* court.
- Seemingly concerned about expansion of the fund, Verizon argues that ASTCA should be required to demonstrate that its proposal satisfies Section 254(h)(2)(A)’s “economically reasonable” requirement. Verizon’s concerns are misplaced. Subsidies for telemedicine connectivity for a total of approximately six health care institutions located in the four insular territories would hardly appear to place a serious economic burden on the woefully underutilized rural health care fund, let alone on the \$6 billion annual overall universal service fund.

### **Conclusion:**

- Especially in light of the compelling and unique combination of circumstances, the Commission must acknowledge the breath of its authority under Section 254(h)(2)(A), as well as applicable precedent and legislative history, which makes clear its ability to provide universal service support for advanced telecommunications service links, without regard to the urban-rural rate comparison enunciated in Section 254(h)(1)(A) of the Act.